CONSTITUTIONAL LAW REPORTER

United States Constitution

U.S. Const. art. 1, sec. 10. Ex post facto laws.

us.1.10.030 A law violates the prohibition against *ex post facto* laws if any one of four factors is present, the **third** of which is that the law increases the punishment over that in effect when the act was done.

State v. Henry, 224 Ariz. 164, 228 P.3d 900, ¶¶ 7–26 (Ct. App. 2010) (court follows *Smith v. Doe,* 538 U.S. 84 (2003) and *State v. Noble,* 171 Ariz. 171, 829 P.2d 1217 (1992), and holds registration requirement for sex offenders is regulatory in nature and thus does not violate prohibition against *ex post facto* laws).

U.S. Const. amend. 1 Freedom of speech.

us.a1.fs.070 The right of free speech is not absolute and does not protect "fighting words," which are those that inflict injury by their very utterance or tend to incite an immediate breach of the peace.

In re Nickolas S., ___ Ariz. ___, 245 P.3d 446, ¶¶ 19–23 (2011) (juvenile was adjudicated delinquent for two counts under A.R.S. § 15–507; one count alleged juvenile had muttered "bitch" under his breath; other count alleged juvenile had yelled several words, such as "you're a fucking bitch," directly at teacher in challenging manner).

us.a1.fs.080 Analyzing whether particular speech constitutes"fighting words" involves **three** factors: **First,** the words must be directed at a particular person or group of persons.

In re Nickolas S., ___ Ariz. ___, 245 P.3d 446, ¶¶ 3, 24 (2011) (juvenile yelled several words, such as "you're a fucking bitch" and "you stupid bitch" directly at teacher in challenging manner).

us.a1.fs.090 Analyzing whether particular speech constitutes"fighting words" involves **three** factors: **Second,** the words must be personally abusive epithets or insults that, when addressed to the ordinary citizen, are as a matter of common knowledge inherently likely to provoke a violent reaction.

In re Nickolas S., ___ Ariz. ___, 245 P.3d 446, ¶¶ 3, 24–27 (2011) (juvenile yelled several words, such as "you're a fucking bitch" and "you stupid bitch" directly at teacher in challenging manner; court noted United States Supreme Court had discussed "men of common intelligence," "average addressee," and "ordinary citizen," but had also considered "likelihood that the person addressed would make an immediate violent response," and thus concluded "this does not mean that all characteristics of the addressee should be ignored in determining if speech constitutes fighting words").

us.a1.fs.100 Analyzing whether particular speech constitutes"fighting words" involves **three** factors: **Third,** the words must be evaluated in the context in which they are used to determine if it is likely that the addressee would react violently.

In re Nickolas S., ___ Ariz. ___, 245 P.3d 446, ¶¶ 28–30 (2011) (juvenile yelled several words, such as "you're a fucking bitch" and "you stupid bitch" directly at teacher in challenging manner; court stated it "did not believe that [the juvenile's] insults would likely have provoked an ordinary teacher to 'exchange fisticuffs' with the student or to otherwise react violently," and because "Arizona teachers exemplify a higher level of professionalism," juvenile's conduct did not result in fighting words).

U.S. Const. amend. 4 Search and seizure—Government action.

us.a4.ss.ga.020 In determining whether a person was acting as an agent of the state, the court uses a two-part test: (1) the degree of government participation (government's knowledge and acquiescence); and (2) whether the citizen was motivated by a desire to assist the police (person's intent).

State v. Garcia-Navarro, 224 Ariz. 38, 226 P.3d 407, ¶¶ 6–7 (Ct. App. 2010) (at trial, defendant claimed border patrol agent did not have reasonable suspicion to stop his vehicle; trial court granted defendant's motion to suppress; on appeal, state contended border patrol agent was acting as private citizen; court concluded federal government had knowledge of border patrol agent's actions, and intent of border patrol agent was to use his federal authority, thus border patrol agent was acting as agent of state).

U.S. Const. amend. 4 Search and seizure—Legitimate expectation of privacy.

us.a4.ss.xp.050 A person has a reasonable expectation of privacy in the home's curtilage; in determining whether an area is part of the home's curtilage, courts consider **four** factors, the **first** of which is the proximity of the area to the home.

State v. Blakley, 226 Ariz. 25, 243 P.3d 628, ¶ 7 (Ct. App. 2010) (officer followed vehicle until it turned into driveway; officer then walked up driveway to rear of vehicle, where defendant approached him; state did not dispute that vehicle was parked in curtilage of defendant's home).

State v. Olm, 223 Ariz. 429, 224 P.3d 245, ¶¶ 6, 10–12 (Ct. App. 2010) (vehicle was parked in yard facing house, 5 to 6 feet from house, and to left of concrete walkway leading to front door; officer walked into yard 10 to 15 feet from concrete walkway to left side of vehicle and looked at VIN plate through windshield; area directly abutted home's front patio; taking all factors into consideration, court concludes area was part of curtilage).

us.a4.ss.xp.060 A person has a reasonable expectation of privacy in the home's curtilage; in determining whether an area is part of the home's curtilage, courts consider **four** factors, the **second** of which is whether the area is included within an enclosure surrounding the home.

State v. Blakley, 226 Ariz. 25, 243 P.3d 628, ¶ 7 (Ct. App. 2010) (officer followed vehicle until it turned into driveway; officer then walked up driveway to rear of vehicle, where defendant approached him; state did not dispute that vehicle was parked in curtilage of defendant's home).

state v. Olm, 223 Ariz. 429, 224 P.3d 245, ¶¶ 6, 10–12, 16 (Ct. App. 2010) (vehicle was parked in yard facing house, 5 to 6 feet from house, and to left of concrete walkway leading to front door; officer walked into yard 10 to 15 feet from concrete walkway to left side of vehicle and looked at VIN plate through windshield; yard was not enclosed, but it was bordered by clearly public sidewalks, thus marking boundaries of curtilage; taking all factors into consideration, court concludes area was part of curtilage; court states that, merely because area is not enclosed, that does not mean person does not have reasonable expectation of privacy in that area).

us.a4.ss.xp.070 A person has a reasonable expectation of privacy in the home's curtilage; in determining whether an area is part of the home's curtilage, courts consider **four** factors, the **third** of which is the nature of the uses to which the area is put.

State v. Blakley, 226 Ariz. 25, 243 P.3d 628, ¶¶ 7, 17 (Ct. App. 2010) (officer followed vehicle until it turned into driveway; officer then walked up driveway to rear of vehicle, where defendant approached him; state did not dispute that vehicle was parked in curtilage of defendant's home; court noted officer walked past pathway that led directly to front door and continued walking down driveway into area ordinarily not used by visitors).

State v. Olm, 223 Ariz. 429, 224 P.3d 245, ¶¶ 6, 10–12 (Ct. App. 2010) (vehicle was parked in yard facing house, 5 to 6 feet from house, and to left of concrete walkway leading to front door; officer walked into yard 10 to 15 feet from concrete walkway to left side of vehicle and looked at VIN plate through windshield; defendant used area for express purpose of parking vehicle and protecting it from public, and no evidence yard was regularly traversed by public to walk to front door; taking all factors into consideration, court concludes area was part of curtilage).

us.a4.ss.xp.080 A person has a reasonable expectation of privacy in the home's curtilage; in determining whether an area is part of the home's curtilage, courts consider **four** factors, the **fourth** of which is steps taken by the resident to protect the area from observation by people passing by.

State v. Blakley, 226 Ariz. 25, 243 P.3d 628, ¶ 7 (Ct. App. 2010) (officer followed vehicle until it turned into driveway; officer then walked up driveway to rear of vehicle, where defendant approached him; state did not dispute that vehicle was parked in curtilage of defendant's home).

State v. Olm, 223 Ariz. 429, 224 P.3d 245, ¶¶ 6, 10–12 (Ct. App. 2010) (vehicle was parked in yard facing house, 5 to 6 feet from house, and to left of concrete walkway leading to front door; officer walked into yard 10 to 15 feet from concrete walkway to left side of vehicle and looked at VIN plate through windshield; defendant had taken no steps to protect area from observation; taking all factors into consideration, court concludes area was part of curtilage).

us.a4.ss.xp.090 Even if area is within the home's curtilage, a person does not have a reasonable expectation of privacy in a path leading to the front door, a front porch, and the front door because that area is implicitly open to the public.

State v. Olm, 223 Ariz. 429, 224 P.3d 245, ¶¶ 13–15 (Ct. App. 2010) (vehicle was parked in yard facing house, 5 to 6 feet from house, and to left of concrete walkway leading to front door; officer walked into yard 10 to 15 feet from concrete walkway to left side of vehicle and looked at VIN plate through windshield; because concrete walkway clearly delineated path guests were expected to take to get to front door, officer was not entitled to go to other area to view VIN number).

U.S. Const. amend. 4 Search and seizure—Questioning.

us.a4.ss.qs.030 A seizure is not established by a mere request for identification, nor by the initial holding and review of such documents, but an officer's retention of identification papers under some circumstances may transform an interview into a seizure when it is prolonged or is accompanied by some other act compounding an impression of restraint because, under such circumstances, a reasonable person would not feel free to depart.

State v. Kinney, 225 Ariz. 550, 241 P.3d 914, ¶¶ 2–18 (Ct. App. 2010) (officers were looking for person named "Balentine"; they saw defendant, who matched description of "Balentine," standing near truck, so they asked him his name and to show them his hands; when defendant did not comply, one officer drew his weapon, whereupon defendant reached into cab of truck, so officers moved defendant toward back of truck; officers observed weapon in truck, so they handcuffed defendant; defendant then gave officers his name and said they could check his wallet to verify his identity; officers then read defendant *Miranda* warnings, and defendant said he was willing to waive those rights and answer questions; court held officers had reasonable suspicion to stop and question defendant because he looked like "Balentine," but once they determined he was not "Balentine," they no longer had reasonable suspicion to detain him, thus trial court properly suppressed statements defendant made at time of arrest).

State v. Hummons, 225 Ariz. 254, 236 P.3d 1201, ¶¶ 6–11 (Ct. App. 2010) (defendant was walking on street in "desheveled" clothing, but was carrying what appeared to be "very new" weed trimmer and neatly wound extension cord; officer questioned him and he seemed "very cooperative"; officer asked for some identification, and defendant provided his Arizona identification card; officer retained identification card for 5 to 10 minutes while she conducted warrants check and discovered defendant had outstanding misdemeanor arrest warrant; she intended to allow defendant to leave after she told him to take care of warrant, but he became aggravated and started yelling; so she arrested him, and in subsequent search found drugs; court said that, once officer inspected defendant's identification card, she presumably had all information she needed to confirm defendant was person he purported to be, but held that, even assuming circumstances amounted to detention unsupported by reasonable suspicion, defendant's arrest pursuant to outstanding warrant was intervening circumstance sufficient to dissipate any taint caused by stop).

U.S. Const. amend. 4 Search and seizure—Investigative stop and reasonable suspicion.

us.a4.ss.is.010 A detention or seizure occurs when a police officer restrains a citizen's liberty by means of physical force or show of authority, which includes the threatening presence of several officers, the display of weapons, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled, and in the absence of physical force, a seizure requires submission to a show of authority.

State v. Ramsey, 223 Ariz. 480, 224 P.3d 977, ¶¶ 11–16 (Ct. App. 2010) (officers were patrolling in housing project, which was considered high crime area, and saw defendant acting suspicious, so they followed him; when defendant put his hand in his pocket, they thought he might be reaching for a weapon, so they ordered him to take his hand out of his pocket and place it on his head; rather than complying, defendant continued to walk away with hands in pockets; officers ran up to defendant and grabbed him, at which time defendant put his right hand on his head and with his left hand placed piece of clear plastic in mouth; although officers engaged in continuous show of authority, defendant did not yield to that show of authority until he took his hand out of pocket and placed it on top of head; as result, court may consider all defendant's conduct prior to that point to determine whether officers had reasonable suspicion to stop him).

us.a4.ss.is.020 An officer may stop and detain a person for investigatory purposes if the totality of the circumstances gives the officer a reasonable, articulable suspicion that a particular person has committed, was committing, or was about to commit a crime or a traffic violation.

State v. Sweeney, 224 Ariz. 107, 227 P.3d 868, ¶ 8 (Ct. App. 2010) (DPS officer stopped defendant's vehicle because of vehicle's speed, icy condition of roadway, and distance it was following other vehicles).

State v. Ramsey, 223 Ariz. 480, 224 P.3d 977, ¶¶ 17–21 (Ct. App. 2010) (at 1:00 a.m., officers were patrolling in housing project, which was considered high crime area, and saw defendant acting suspicious, so they followed him; defendant made several attempts to evade officers, including covering great distance in short period of time; each time officers caught up to defendant, he changed directions; when officers finally came up behind defendant, he put his hand in his pockets and would not remove them in spite of officer's continued commands; court held this gave officers reasonable suspicion to stop defendant).

us.a4.ss.is.030 When an officer approaches a person, the person has the right to ignore the officer and go about his or her business without creating reasonable suspicion; unprovoked, evasive action is not "going about one's business."

State v. Ramsey, 223 Ariz. 480, 224 P.3d 977, ¶ 22 (Ct. App. 2010) (at 1:00 a.m., officers were patrolling in housing project, which was considered high crime area, and saw defendant acting suspicious, so they followed him; defendant made several attempts to evade officers, including covering great distance in short period of time; each time officers caught up to defendant, he changed directions; when officers finally came up behind defendant, he put his hand in his pockets and would not remove them in spite of officer's continued commands; court held this evasive action was not "going about one's business").

us.a4.ss.is.040 In determining whether the totality of the circumstances gives rise to a particularized and founded suspicion that the person is engaged in criminal activity, the court must view all of the circumstances together, rather than viewing each individual factor separately and determining whether there might be an innocent explanation for each factor in isolation.

State v. Ramsey, 223 Ariz. 480, 224 P.3d 977, ¶¶ 23–26 (Ct. App. 2010) (at 1:00 a.m., officers were patrolling in housing project, which was considered high crime area, and saw defendant acting suspicious, so they followed him; defendant made several attempts to evade officers, including covering great distance in short period of time; each time officers caught up to defendant, he changed directions; when officers finally came up behind defendant, he put his hand in his pockets and would not remove them in spite of officer's continued commands; defendant contended there were plausible, innocent explanations for his behavior; court held officers were not required to rule out possibility of innocent explanations for defendant's behavior).

us.a4.ss.is.160 If the officers have reasonable basis to conduct an investigatory stop, they may detain the suspect for a reasonable time, which is the amount of time necessary to confirm or dispel their suspicions; if they detain the suspect longer than is reasonable, it will turn into an arrest, which requires probable cause.

State v. Sweeney, 224 Ariz. 107, 227 P.3d 868, ¶¶ 16–19 (Ct. App. 2010) (DPS officer stopped defendant's vehicle because of vehicle's speed, icy condition of roadway, and distance it was following other vehicles; while filling out warning citation, defendant told officer he was traveling from New York to Arizona in search of older model Camaro; officer asked defendant why he did not fly instead, and defendant said he liked driving; officer asked defendant if he had found a Camaro online, and he said he had not; officer asked defendant where he stayed while in Arizona, and defendant said in hotel; after completing warning citation, which took 8 minutes, officer handed citation to defendant and wished him safe trip; court held duration of this encounter was reasonable).

us.a4.ss.is.170 If the officers have reasonable basis to conduct an investigatory stop, they may detain the person for a reasonable time; if they detain the suspect longer than is reasonable, or if they make a second stop of the person, they must have additional reasons for this continual detention or second stop.

State v. Sweeney, 224 Ariz. 107, 227 P.3d 868, ¶¶ 20–22 (Ct. App. 2010) (DPS officer stopped defendant's vehicle because of vehicle's speed, icy condition of roadway, and distance it was following other vehicles; after completing warning citation, officer handed citation to defendant and wished him safe trip; after defendant turned and was walking towards his vehicle, officer called to defendant and asked to speak to him again; defendant turned and approached officer, who

asked if he could search vehicle or have dog sniff vehicle; when defendant refused and turned toward vehicle, officer grabbed defendant's arm and said he was being detained; court held this was second detention, that reasons for first detention did not support second detention, and officer did not develop any additional facts to support second detention, thus second detention was not reasonable and trial court should have suppressed evidence obtained during this second detention).

U.S. Const. amend. 4 Search and seizure—Arrest.

us.a4.ss.a.010 A person is seized when either an officer uses physical force or the person submits to the assertion of authority.

State v. Ramsey, 223 Ariz. 480, 224 P.3d 977, ¶¶ 11–16 (Ct. App. 2010) (officers were patrolling in housing project, which was considered high crime area, and saw defendant acting suspicious, so they followed him; when defendant put his hand in his pocket, they thought he might be reaching for a weapon, so they ordered him to take his hand out of his pocket and place it on his head; rather than complying, defendant continued to walk away with hands in pockets; officers ran up to defendant and grabbed him, at which time defendant put his right hand on his head and with his left hand placed piece of clear plastic in mouth; although officers engaged in continuous show of authority, defendant did not yield to that show of authority until he took his hand out of pocket and placed it on top of head; as result, court may consider all defendant's conduct prior to that point to determine whether officers had reasonable suspicion to stop him).

U.S. Const. amend. 4 Search and seizure—Search without a warrant.

us.a4.ss.nw.010 When a person voluntarily abandons property, that person no longer has standing to complain about the search and seizure of the property, thus the police may search abandoned property without a warrant.

State v. Huerta, 223 Ariz. 424, 224 P.3d 240, ¶¶ 2–17 (Ct. App. 2010) (after persons in SUV fired shots at defendant, defendant got into his truck and chased after them, spilling items from bed of truck onto roadway; sheriff's deputies arrived and moved items onto sidewalk; when defendant returned, he claimed all items except for duffle bag; when specifically asked about duffle bag, defendant neither admitted nor denied owning it; deputies opened duffle bag and found cocaine in it; from totality of circumstances, court concluded defendant abandoned duffle bag and thereby sacrificed any privacy interest he had in it, so search of bag did not violate any constitutional right defendant had, thus trial court erred in granting defendant's motion to suppress).

us.a4.ss.nw.020 A denial of ownership, when questioned, constitutes abandonment.

State v. Huerta, 223 Ariz. 424, 224 P.3d 240, ¶¶ 2–17 (Ct. App. 2010) (after persons in SUV fired shots at defendant, defendant got into his truck and chased after them, spilling items from bed of truck onto roadway; sheriff's deputies arrived and moved items onto sidewalk; when defendant returned, he claimed all items except for duffle bag; when specifically asked about duffle bag, defendant neither admitted nor denied owning it; deputies opened duffle bag and found cocaine in it; from totality of circumstances, court concluded defendant abandoned duffle bag and thereby sacrificed any privacy interest he had in it, so search of bag did not violate any constitutional right defendant had, thus trial court erred in granting defendant's motion to suppress).

U.S. Const. amend. 4 Search and seizure—Exigent circumstances.

us.a4.ss.ec.020 Under certain circumstances, police may make a warrantless protective sweep of a residence if they are lawfully at a residence and they reasonably perceive an immediate danger to their safety.

State v. Fisher, 225 Ariz. 258, 236 P.3d 1205, ¶¶ 5–11 (Ct. App. 2010) (officers investigated assault where victim had been pistol-whipped; victim provided physical description, nickname, description of vehicle, and address of suspect; officers went to address and knocked; man opened door and identified himself using nickname officers had been given; that man and two others exited residence, but none had gun; officers then conducted protective sweep of residence and found drugs in plain view; court held that, because officers knew gun had been used and could not account for gun when they questioned the three men, officers were justified in making protective sweep to try to locate gun).

U.S. Const. amend. 4 Search and seizure—Plain view, smell, or feel.

us.a4.ss.pvsf.050 An officer may reach into a suspect's pocket and seize an item of contraband if the officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass gives the officer probable cause to believe the item is contraband.

State v. Ahumada, 225 Ariz. 544, 241 P.3d 908, ¶¶ 14–18 (Ct. App. 2010) (officer was called to casino to respond to probable drug transaction; officer viewed surveillance video in which defendant approached person, spoke briefly, and looked around, whereupon person handed something to defendant that he put in his pocket; officer approached defendant and asked if he had anything illegal on him, and defendant said he did not; officer asked defendant to empty his pockets, which defendant appeared to do; officer asked if he could "pat down" defendant, and defendant agreed; officer felt object in defendant's pocket and asked defendant what it was, and defendant said he did not know; officer reached into pocket and pulled out "two small plastic bindles with a white rocky substance in them," that was later determined to be cocaine; defendant contended officer's reaching into pocket exceeded scope of pat-down search to which he consented; court appears to agree with defendant, but held officer's observation of what appeared to be drug transaction, together with officer's training and experience, and feel of object in pocket, gave officer probable cause to believe object in pocket was contraband, and permitted officer to reach into pocket and retrieve object).

U.S. Const. amend. 4 Search and seizure—Inventory search.

us.a4.ss.iv.010 An inventory search is valid if: (1) law enforcement officials have lawful possession or custody of vehicle; and (2) they conduct the inventory search in good faith and not as a subterfuge for a warrantless search.

State v. Organ, 225 Ariz. 43, 234 P.3d 611, ¶¶ 20–23 (Ct. App. 2010) (after valid stop, officer determined defendant's driver's license had been suspended, and at that point, officer had to impound vehicle; while conducting inventory search, officer found crack pipe, cocaine, and methamphetamine; court concluded officer had lawful possession of vehicle because A.R.S. § 28–3511(A)(1) required him to impound vehicle once he discovered defendant's driver's license was suspended, and that officer conducted inventory search in good faith because DPS policy required officer to conduct inventory search of all vehicles impounded).

State v. Organ, 225 Ariz. 43, 234 P.3d 611, ¶¶ 25–26 (Ct. App. 2010) (officer stopped vehicle pursuant to community caretaker function; defendant said he stopped on side of road because he was tired and sleepy; officer had defendant exit vehicle and walk around to ensure he was not driving impaired and could drive home safely; officer became suspicious of female passenger because, although defendant said he had known her for several days, he did not know her name; because female said she had prior conviction for prostitution, officer believed he had encountered "prostitution situation"; officer asked defendant if he would consent to search of vehicle, and defendant declined; officer asked if he could have dog sniff around vehicle, and defendant said he had no problem with that; officer checked defendant's driver's license and determined it was suspended; officer told defendant he would have to impound vehicle; while conducting inventory search, officer found crack pipe, cocaine, and methamphetamine; defendant contended inventory search was pretext because officer expressed interest in searching vehicle even before he learned of license suspension; court rejected that argument because, before officer asked about searching vehicle, he believed he was "looking at a prostitution case" and believed there might be evidence relating to that in vehicle).

us.a4.ss.iv.020 An officer may conduct an inventory search if and to the extent the officer's departmental policies allow such a search.

State v. Organ, 225 Ariz. 43, 234 P.3d 611, ¶¶ 20–23 (Ct. App. 2010) (defendant contended inventory search was pretext because officer failed to make adequate inventory of vehicle; although there were some items of minimal value in vehicle that officer did not list in inventory report, such as compact disc and paper receipts, officer testified DPS policy was to list only "items of value," thus failure to list certain items did not make inventory search invalid).

U.S. Const. amend. 4 Search and seizure—Community caretaking function.

us.a4.ss.ccf.010 The community caretaking function justifies a warrantless entry if (1) a prudent and reasonable office would have perceived a need to act in the proper discharge of the community caretaking function, and (2) the intrusion is suitably circumscribed to serve the exigency that prompted it.

State v. Mendoza-Ruiz, 225 Ariz. 473, 240 P.3d 1235, ¶¶ 2–12 (Ct. App. July 29, 2010) (officer was looking at pick-up truck matching description of one involved in theft when owner and friend approached and said his keys were locked inside; officer patted down suspects and handcuffed them for investigative detention; while looking through truck's window, officer saw holstered handgun next to driver's seat, so she had locksmith open truck and then took possession of gun; court noted (1) gun was visible from outside truck, (2) many people were in area, (3) area was high-crime area, thus officer was reasonable in entering truck and taking possession of gun, thus trial court erred in granting defendant's motion to suppress).

State v. Organ, 225 Ariz. 43, 234 P.3d 611, ¶¶ 2–19 (Ct. App. 2010) (officer saw vehicle stopped on shoulder of road with emergency flashers activated; officer turned his vehicle around and activated his emergency lights to alert driver that he was enforcement officer; by then, vehicle was moving slowly on shoulder with emergency flashers off; defendant stopped vehicle, and when officer approached him and asked if everything was all right, defendant said he stopped on side of road because he was tired and sleepy; officer had defendant exit vehicle and walk around to ensure he was not driving impaired and could drive home safely; officer became suspicios of female passenger because, although defendant said he had known her for several days, he did not know her name; because female said she had prior conviction for prostitution, officer believed he had encountered "prostitution situation"; officer checked defendant's driver's license and determined

it had been suspended; officer told defendant he would have to impound vehicle; while conducting inventory search, officer found crack pipe, cocaine, and methamphetamine; court held initial stop was reasonable because actions of vehicle gave officer reason to believe driver was having some emergency or trouble and action in stopping vehicle was suitably circumscribed to serve the exigency that prompted it, and it was only after officer noticed suspicious behavior while performing welfare check that his inquiry changed from assistance to potential criminal investigation).

U.S. Const. amend. 4 Search and seizure—Consent.

us.a4.ss.cs.150 If the police have engaged in illegal conduct and subsequently obtain evidence used against the defendant, the court must look at three factors to determine whether the taint of the illegal conduct is sufficiently attenuated from the evidence subsequently obtained: (1) the time elapsed between the illegal conduct and the acquisition of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct.

State v. Blakley, 226 Ariz. 25, 243 P.3d 628, ¶¶ 20–26 (Ct. App. 2010) (officer followed vehicle until it turned into driveway; officer then walked up driveway to rear of vehicle, where defendant approached him and then consented to search; court held officer's entry onto driveway violated defendant's Fourth Amendment rights; court concluded (1) defendant consented to search simultaneously with officer's illegal presence, (2) there were no intervening circumstances, and (3) there was no evidence that officer's intrusion into constitutionally protected area was for legitimate purpose, thus taint of illegal conduct was not sufficiently attenuated from evidence subsequently obtained and trial court should have granted defendant's motion to suppress).

State v. Kinney, 225 Ariz. 550, 241 P.3d 914, ¶¶ 19–20 (Ct. App. 2010) (officers were looking for person named "Balentine"; they saw defendant, who matched description of "Balentine," standing near truck, so they asked him his name and to show them his hands; various actions then happened, resulting in officers' handcuffing defendant; defendant then gave officers his name and said they could check his wallet to verify his identity, which they did; officers then read defendant *Miranda* warnings, and defendant said he was willing to waive those rights and answer questions, which he did at the scene and later at the police station; trial court suppressed statements defendant made at scene but not those he made at police station; court noted (1) record did not establish how much time elapsed between defendant's illegal detention and his subsequent questioning at station, (2) record did not establish any intervening circumstances that purged taint of defendant's illegal detention, and (3) although officers thought they were acting properly, they violated established constitutional; court held taint of defendant's original detention was not purged by time he made statements at police station).

State v. Hummons, 225 Ariz. 254, 236 P.3d 1201, ¶¶ 6–11 (Ct. App. 2010) (defendant was walking on street in "desheveled" clothing, but was carrying what appeared to be "very new" weed trimmer and neatly wound extension cord; officer questioned him and he seemed "very cooperative"; officer asked for some identification, and defendant provided his Arizona identification card; officer retained identification card for 5 to 10 minutes while she conducted warrants check and discovered defendant had outstanding misdemeanor arrest warrant; she intended to allow defendant to leave after she told him to take care of warrant, but he became aggravated and started yelling; so she arrested him, and in subsequent search found drugs; court said that, once officer inspected defendant's identification card, she presumably had all information she needed to confirm defendant was person he purported to be, but held that, even assuming circumstances amounted to detention unsupported by reasonable suspicion, analysis of three factors showed: (1) although time be-

tween illegal conduct and acquisition of evidence was short, that was often least helpful factor; (2) defendant's arrest pursuant to outstanding warrant was intervening circumstance sufficient to dissipate any taint caused by stop; and (3) there was no evidence of bad faith on officer's part, thus trial court did not abuse discretion in denying motion to suppress).

State v. Guillen, 223 Ariz. 314, 223 P.3d 658, ¶¶ 13–23 (2010) (officers received information that defendant was storing marijuana in his garage; when defendant and his wife were not home, officers brought narcotics dog to sniff outside of garage, whereupon dog alerted on garage; when defendant's wife returned, officers asked if they could search premises, and she consented; after narcotics dog alerted on freezer, officers obtained search warrant and discovered bales of marijuana in two other freezers; court began by assuming, without deciding, that dog sniff violated Article 2, Section 8; court then held that intervening circumstances obviated any alleged taint, specifically because wife was unaware of dog sniff when she consented, and that first dog sniff conducted from outside garage was not flagrant police conduct, thus trial court did not err in denying motion to suppress marijuana).

U.S. Const. amend. 4 Search and seizure—Execution of a warrant.

us.a4.ss.xw.020 Even if there is a violation of the knock and announce rule, the Fourth Amendment does not require suppression of the evidence seized.

State v. Roberson, 223 Ariz. 580, 225 P.3d 1156, ¶¶ 8–11 (Ct. App. 2010) (officers had search warrant that said nothing about unannounced entry; officer found defendant's front door closed but unlocked; believing he had "no knock" warrant, officer opened door and went into home, where he seized drugs and drug paraphernalia; defendant conceded that, under United States Constitution, knock and announce violation does not require suppression of evidence seized).

U.S. Const. amend. 5 Double jeopardy.

us.a5.dj.060 The guarantee against double jeopardy bars the government from prosecuting a defendant twice for the same offense.

State v. Mason, 225 Ariz. 323, 238 P.3d 134, ¶¶ 2–9 (Ct. App. 2010) (defendant was charged as accomplice with two counts of aggravated assault, one alleging accomplice beat victim with police baton, and other alleging accomplice beat victim with baseball bat; court held these two acts constituted one assault, thus defendant's convictions for these two counts violated prohibition against double jeopardy).

us.a5.dj.180 When a defendant is successful in getting a plea agreement set aside, double jeopardy does not preclude retrying defendant on charges that were subject to plea agreement.

State v. Szpyrka, 223 Ariz. 390, 224 P.3d 206, ¶¶ 10–12 (Ct. App. 2010) (defendant pled guilty to 2007 felony with prior conviction for 2006 felony; defendant then appealed 2006 felony conviction, which appellate court vacated; defendant then brought petition for post-conviction relief in 2007 felony, contending there was no longer factual basis for plea; trial court agreed and set 2007 felony for resentencing; stated objected because defendant subsequently entered guilty plea for 2006 felony; court agreed there was no longer factual basis for plea in 2007 felony, and defendant's subsequent guilty plea in 2006 felony did not establish factual basis because that guilty plea (and thus conviction) did not happen until after time of guilty plea in 2007 felony; court held, however, trial court erred in setting 2007 felony for resentencing because, once there was no longer factual basis, remedy was to set aside guilty plea in 2007 and set matter for trial).

U.S. Const. amend. 5 Self-incrimination—Voluntariness.

us.a5.si.vol.040 A confession will be found involuntary if (1) the officers engaged in impermissible conduct, or (2) the officers exercised coercive pressure that was not dispelled, or (3) the confession was derived from a prior involuntary statement.

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶¶ 13–14 (2010) (defendant contended his statement was involuntary because polygrapher told him that autopsy and DNA evidence could prove his guilt; court noted these predictions were accurate and, even if false, would not have made statement involuntary).

us.a5.si.vol.110 In order for a confession to be involuntary within the meaning of the Due Process Clause, the officers must have exercised **coercive pressure** that was not dispelled; thus if the officers made an express or implied **promise** of a benefit or leniency, but there is no showing that the defendant's reliance on the promise overcame the defendant's will not to confess, the confession **will not be deemed involuntary.**

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶¶ 15–16 (2010) (after death of girlfriend's daughter, when defendant worried he would be imprisoned for life, officer said, "not necessarily"; officer also told defendant that "telling me the truth, and that's being, I didn't plan this, that makes it a lot better for you"; defendant contended these were implied promises of leniency; court noted defendant had already admitted hitting victim before officers made these statements, but states more importantly that officer did not promise leniency).

us.a5.si.vol.200 Even if the police have engaged in improper conduct, that will not entitle a defendant to relief if the defendant did not make any statements after that improper conduct.

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶ 16 n.3 (2010) (defendant was suspected of killing his girlfriend's daughter; defendant worried he would be imprisioned for life; officer said, "people get out of prison, nobody goes to jail for the rest of their life anymore especially when it's not something they plan"; court noted that, whatever the propriety of those remarks, defendant made no subsequent incriminating statements).

U.S. Const. amend. 5 Self-incrimination—*Miranda.*

us.a5.si.mir.220 Once a person has been given *Miranda* warnings, repeated *Miranda* warnings are required only if circumstances suggest the person is not fully aware of his or her rights.

State v. Villalobos, 225 Ariz. 74, 235 P.3d 227, ¶¶ 11–12 (2010) (officers arrested defendant and gave him *Miranda* warnings; after denying he hit victim, officers asked him to take polygraph, and he agreed; defendant contended he should have been given warnings before his subsequent encounters with polygrapher; court noted only 3 hours elapsed between beginning of interview and conclusion, that defendant was aware at all times he was speaking to police department employees, and that he reviewed and signed consent form reiterating *Miranda* rights just before polygraph examination began, the there was no need to re-advise defendant of *Miranda* warnings).

U.S. Const. amend. 8 Cruel and unusual punishment.

us.a8.cu.020 A natural life sentence for a person who was a juvenile at the time of the crime does not violate the Eighth Amendment.

State v. Pierce, 223 Ariz. 570, 225 P.3d 1146, ¶¶ 2–13 (Ct. App. 2010) (defendant was 16 when he and three others committed crime; female rang doorbell of victim's house; when victim opened door, female stepped aside and defendant and two other males rushed into house; victim struggled with male who had shotgun, and later died of gunshot wounds; defendant said plan was to take guns, money, and "weed" from victim's house; he said he was to get into house "to go grab the s**t" and "to do what I needed to do," which included shooting someone if necessary "[for] my safety"; defendant said that "the dude f****d up" by grabbing the shotgun; court noted United States Supreme Court has only held death sentence for juveniles was cruel and unusual punishment and intimated that natural life sentence for juvenile who committed murder was permissible).

U.S. Const. amend. 14 Due process—Vagueness.

us.a14.dp.vg.010 If a statute has terms that give a person of ordinary intelligence the opportunity to know what is prohibited and provides standards for those who apply the statute, the statute will not violate the Due Process Clause of the Fourteenth Amendment; perfect notice, absolute precision, or impossible standard are not required.

State v. Putzi, 223 Ariz. 578, 225 P.3d 1154, ¶¶ 2–6 (Ct. App. 2010) (court upheld constitutionality of Tucson City Code provision that prohibited person from urinating or defecating "in a public place, or in any place exposed to public view").

U.S. Const. amend. 14 Due process—Charging process.

us.a14.dp.cp.030 If the defendant makes a prima facie showing that the charging decision is more likely than not attributable to vindictiveness by the prosecutor, the burden shifts to the prosecutor to overcome the presumption by objective evidence justifying the prosecutor's action.

State v. Mieg, 225 Ariz. 445, 239 P.3d 1258, ¶¶ 8–23 (Ct. App. 2010) (officer saw scale in defendant's vehicle and arrested him for possession of drug paraphernalia; officer found methamphetamine in defendant's pocket; state charged defendant with possession of dangerous drug; after jurors were sworn, defendant made oral motion to preclude mention of scale or arrest for possession of drug paraphernalia, and trial court granted motion; while testifying, officer volunteered he had arrested defendant for possession of drug paraphernalia; trial court granted defendant's motion for mistrial; state obtained indictment charging defendant with possession of dangerous drug and possession of drug paraphernalia; trial court found sufficient facts to support presumption of vindictiveness and that state failed to rebut presumption, and thus granted defendant's motion to dismiss both charges with prejudice; court held defendant failed to make prima facie showing sufficient to raise presumption of prejudice; court stated defendant failed to establish prosecutor acted with actual vindictiveness and circumstances failed to show vindictiveness because prosecutor was surprised by trial court's suppression ruling, state acted reasonably by not charging possession of drug paraphernalia in first instance, and state was permitted to change strategy in response to trial court's ruling; court reversed trial court's order and remanded for reinstatement of charges).

U.S. Const. amend. 14 Due process—Collection, retention, and disclosure of evidence.

us.a14.dp.ev.020 When the state has failed to preserve evidence the exculpatory nature of which is unknown, the defendant must show that the state acted in bad faith in order to show a due process violation.

State v. Womble, 225 Ariz. 91, 235 P.3d 244, ¶¶ 14–18 (2010) (MCSO kept digital tape recordings of jail telephone calls for 6 months, and then reused them; officers obtained court order to listen to tapes of calls defendant made, and copied 27 of them; officers did not copy nine tapes, and those were recorded over after 6 months; defendant moved to suppress 27 tapes that were copied, which trial court denied; court addressed same issue in *State v. Speer,* 221 Ariz. 499, 212 P.3d 787 (2009), and held defendant failed to establish either that destroyed tapes contained material exculpatory evidence or that police acted in bad faith, thus defendant failed to establish due process violation).

U.S. Const. amend. 14 Due process—Identification procedures.

us.a14.dp.id.030 To establish a due process violation, a defendant must establish three factors, the **first** of which is that the circumstances surrounding the pretrial identification were unnecessarily (unduly) suggestive.

State v. Machado, 224 Ariz. 343, 230 P.3d 1158, ¶¶ 62–63 (Ct. App. 2010) (because defendant did not move to suppress identification, trial court never made ruling on whether identification was suggestive; because defendant did not establish identification was suggestive, defendant was not entitled to *Dessureault* instruction).

us.a14.dp.id.040 To establish a due process violation, a defendant must establish three factors, the **second** of which is that the state bore sufficient responsibility for the suggestive pretrial identification to trigger due process protections.

State v. Garcia, 224 Ariz. 1, 226 P.3d 370, ¶¶ 6–11 (2010) (police gave pictures from security camera to local television stations, and told witnesses to avoid watching any coverage of crime; witness A later saw reward flier that used picture from security camera; detective unequivocally testified that police were not responsible for reward flier; court held fact that some unidentified third party may have used police-released photograph to create reward flier did not constitute state action, thus no reason to suppress identification).